

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Edward A. Patterson,

NO. C 08-05105 JW

Plaintiff,

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS WITH
PREJUDICE**

v.

Family YMCA of Santa Clara County,

Defendant.

Presently before the Court is Defendant's Motion to Dismiss.¹ Edward Patterson ("Plaintiff"), proceeding *pro se*, brings this action against Family YMCA of Santa Clara County ("Defendant"), alleging that Defendant's membership policy violates the Eighth, Eleventh and Fourteenth Amendments, and violations of the Supreme Court's decisions in Brown v. Board of Educ. 347 U.S. 483 (1954), and Brown v. Board of Educ., 349 U.S. 294 (1955). Plaintiff alleges that Defendant violated his rights by refusing to grant him access to its facility for more than two weeks even though he was a member of a different YMCA branch. (Complaint, Docket Item No. 1)

The Court conducted a hearing on March 23, 2009. Counsel appeared on behalf of Defendant. There was no appearance by Plaintiff. In this regard, Plaintiff has also failed to file an opposition to Defendant's Motion. Based upon the papers submitted to date by Defendant and oral argument, the Court GRANTS Defendant's Motion to Dismiss with prejudice.


¹ (Defendant's Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and/or 12(b)(6), or in the Alternative, for a More Definitive Statement Under Fed. R. Civ. P. 12(e), hereafter, "Motion," Docket Item No. 13.)

1 Upon its independent examination, the Court finds that Plaintiff's Complaint fails to state a
 2 legally cognizable claim under any federal or state law. It appears that Plaintiff is seeking
 3 vindication for violation of his rights under 42 U.S.C. § 1983. Under § 1983, a plaintiff may make a
 4 claim against a private entity only if the plaintiff can show that the private entity acted "under color
 5 of state law" or that there is a close connection between the state and the private entity. West v.
 6 Atkins, 487 U.S. 42, 48 (1988); Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003). Here,
 7 Plaintiff fails to allege that Defendant, the YMCA, was either a state actor or was acting under color
 8 of state law. Thus, Plaintiff has not stated a valid claim under § 1983.

9 Although leave to amend should be granted with extreme liberality, the Court finds that
 10 Plaintiff will not be able to cure the defects of his Complaint. See Keniston v. Roberts, 717 F.2d
 11 1295, 1300 (9th Cir. 1983). First, Plaintiff's factual allegations indicate he will not be able to plead
 12 a close connection between the state and Defendant under § 1983. Second, even if there is a
 13 plausible breach of contract claim, the Court would not have jurisdiction over such a claim.
 14 Diversity jurisdiction requires a controversy between citizens of different states and an amount in
 15 controversy that exceeds \$75,000. 28 U.S.C. § 1332. Here, the Court takes Judicial Notice that
 16 Defendant is incorporated in California as "YMCA of Silicon Valley, No. C0018271."² Thus, there
 17 is no diversity between Plaintiff and Defendant.

18 Accordingly, the Court GRANTS Defendant's Motion to Dismiss with prejudice.

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 20 Dated: March 25, 2009


 JAMES WARE
 United States District Judge

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 26 ² California Secretary of State - California Business Search,
 27 <http://kepler.sos.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C0018271> (last visited Mar. 10,
 28 2009).

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Rona Page Layton rlayton@simsandlayton.com

Edward A. Patterson
Post Office Box 754
San Jose, CA 95106

Dated: March 25, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers

Elizabeth Garcia
Courtroom Deputy